

ALEX G. TSE (CABN 152348)
United States Attorney

BARBARA J. VALLIERE (DCBN 439353)
Chief, Criminal Division

JEFF SCHENK (CABN 234355)
JOHN C. BOSTIC (CABN 264367)
ROBERT S. LEACH (CABN 196191)
Assistant United States Attorneys

150 Almaden Boulevard, Suite 900
San Jose, California 95113
Telephone: (408) 535-5061
Fax: (408) 535-5066
Jeffrey.b.schenk@usdoj.gov
Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	CR-18-00258-EJD
)	
Plaintiff,)	JOINT STATUS MEMORANDUM
)	
v.)	
)	
ELIZABETH HOLMES and)	
RAMESH "SUNNY" BALWANI,)	
)	
Defendants.)	
)	

The parties in the above-captioned matter hereby file this joint status memorandum in advance of the status conference set for January 14, 2019.

I. Status of Discovery

The grand jury returned the original Indictment in this case on June 14, 2018, and returned the Superseding Indictment on September 5, 2018. Defendants thereafter demanded government compliance with its discovery and constitutional obligations. On August 7 and 23, 2018, the government produced more than four million pages of discovery to the defense; the government represents that this includes the bulk of the reports memorializing dozens of interviews conducted in this

1 case.

2 Since the last status conference on October 15, 2018, the government has continued to process
3 and produce the large volume of discovery in this case. On October 19, 2018, the government produced
4 approximately seven million pages of additional discovery to the Defendants.

5 On November 1, 2018, the government produced an additional batch of discovery totaling
6 approximately 5.7 million pages. The government's method of encrypting this November 1 production
7 and its prior productions, as it turned out, led to substantial delays before an external vendor for the
8 defense could provide defense counsel with access to the documents. The defense was not able to obtain
9 access to the government's October 19, 2018 production until December 20, 2018. On November 20,
10 2018, the defense met and conferred with the government to address the encryption method and the
11 parties have now taken steps to avoid similar delays for future productions.

12 On December 27, 2018, the government sent Defendants a production consisting of tens of
13 thousands of pages mostly collected from a variety of third-party sources.

14 Due to the extremely large volume of discovery materials involved, the government has
15 processed much of its discovery through the DOJ's Litigation Technology Service Center ("LTSC") in
16 South Carolina. The government represents that this facility has the ability to process and produce large
17 volumes of documents faster and more efficiently than in-house at the U.S. Attorney's Office. Despite
18 the LTSC's increased bandwidth, the processing and bates stamping of these materials has taken
19 months. The LTSC is currently processing a batch of documents collected from Theranos that the
20 government estimates will exceed one million pages. The LTSC estimates that it will return that
21 completed production to the government within the next two weeks, at which time the government will
22 promptly copy and produce it to both Defendants. The government expects production of documents it
23 has collected to date to be largely complete shortly thereafter.

24 At this time, Defendants are unable to agree with the Government's representation. Because
25 Defendants only recently were able to access the October and November productions in a readable
26 format, counsel for the Defendants have not yet reviewed the over 12 million pages of discovery.
27 Additionally, Defendants only very recently received the December 27th production and are still
28 working on loading that discovery. Further, Defendants have not yet received over 1 million additional

1 pages of discovery. Defendants, therefore, are unable to determine what, if any, discovery is missing.
2 Based on the discovery that the defense has been able to review, however, the government's production
3 is far from complete, and the defense is preparing a letter detailing the deficiencies that can be
4 determined based on the review of the discovery so far.

5 **II. Additional Time to Review Discovery**

6 The defense requires additional time to review the voluminous discovery, much of which it has
7 just recently been able to access, and at least one million pages of which it has not received as of this
8 Joint Status Memorandum. Therefore, the parties anticipate requesting a further status conference
9 before the Court in April 2019, at which time the government anticipates it will have completed or at
10 least be much further along in complying with its discovery obligations and the defense will have had a
11 greater opportunity to review the millions of pages produced and to be produced.

12
13 DATED: January 7, 2019

Respectfully submitted,

14 ALEX G. TSE
15 United States Attorney

16 /s/
17 JEFF SCHENK
18 JOHN C. BOSTIC
19 ROBERT S. LEACH
20 Assistant United States Attorneys

21 DATED: January 7, 2019

22 /s/
23 KEVIN DOWNEY
24 LANCE WADE
25 Attorneys for Elizabeth Holmes

26 DATED: January 7, 2019

27 /s/
28 JEFF COOPERSMITH
MARK BARTLETT
Attorneys for Ramesh "Sunny"
Balwani